

JENNIFER B. DICKEY  
Acting Assistant Attorney General  
JOHN V. COGHLAN  
Deputy Assistant Attorney General  
AUGUST E. FLENTJE  
Special Counsel to the Assistant Attorney General  
ALEXANDER K. HAAS  
Branch Director  
DIANE KELLEHER  
BRAD P. ROSENBERG  
Assistant Branch Directors  
ELLIOTT M. DAVIS  
STEPHEN EHRLICH  
JOHN J. ROBINSON  
ALEXANDER V. SVERDLOV  
M. ANDREW ZEE  
Trial Attorneys  
U.S. Department of Justice  
Civil Division, Federal Programs Branch  
1100 L Street, NW  
Washington, D.C. 20005  
Telephone: (202) 305-0550

*Attorneys for Defendants*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

NATIONAL URBAN LEAGUE, *et al.*,

Plaintiff,

v.

WILBUR L. ROSS, JR., *et al.*,

Defendants.

Case No. 5:20-cv-05799-LHK

**DEFENDANTS' RESPONSE TO CASE  
MANAGEMENT ORDER, ECF No. 444**

Defendants submit this response to the Court's January 11, 2021 Order, which states, in relevant part: "Defendants must review all documents that Defendants have segregated for Defendant's 7 search terms ("DOJ," "usdoj.gov", "WP", "declaration" within 10 of "draft," "ACP," "attorney client," and "work product") or possible attorney work-product: (1) for which no attorney is the sender, recipient or carbon copied recipient, or (2) for which Michael Cannon, Melissa Creech and/or Miles Ryan is the sender, recipient or carbon copied recipient. Based on Defendants' review, Defendants must log the privileged documents on Defendants' privilege log; produce the responsive, non-privileged documents to Plaintiffs; or produce the non-responsive documents to the Magistrate Judge Panel for in camera review. Defendants shall file a declaration that they have completed this review by January 14, 2021. Defendants shall produce the privilege log and start producing the documents from this review to Plaintiffs and the Magistrate Judge Panel by January 15, 2021." ECF 444 at 2.

In response to the Court's order, Defendants state as follows:

1. As explained in the attached declaration from Diane Kelleher, a career Assistant Branch Director with the Department of Justice, Defendants have completed their review process. For the material on which Defendants made determinations, privileged documents are being placed on a log; Defendants are preparing to produce responsive, non-privileged documents to Plaintiffs; and Defendants are preparing to produce any documents deemed non-responsive to the Magistrate Judge Panel for *in camera* inspection. Defendants were not able to make determinations on all of the documents that fall within categories (1) and (2) of the segregated materials specified above. Defendants are preparing to produce any documents on which determinations were not made to Plaintiffs along with responsive, non-privileged documents. Consistent with the Court's Order, Defendants are preparing to "produce the privilege log and start producing the documents from this review to Plaintiffs and the Magistrate Judge Panel" on January 15, 2021. ECF 444 at 2.

2. Defendants determined that this approach was necessary in light of the timeframe for complying with the requirements of the Court's Order quoted above; Defendants' limited resources; and Defendants' other outstanding discovery obligations, which also require Defendants' time and attention.

3. Defendants had previously engaged in a lengthy meet-and-confer process with Plaintiffs on the litigation screening process, including discussion of the terms and attorneys involved; Defendants provided additional information that Plaintiffs had requested during those discussions and in follow-up correspondence, including in a letter sent on January 8, 2021. Defendants did not receive a response to their January 8 communication to Plaintiffs, and Plaintiffs raised the issue with the Court on January 11, 2021. *See* ECF No. 441 at 6-8.

4. For Defendants' future productions to Plaintiffs through the close of fact discovery, Defendants will no longer apply the litigation screen utilized to date but instead intend to apply a more limited litigation screen focused on Department of Justice attorneys and the four Department of Commerce attorneys to whom Plaintiffs have not objected.

DATED: January 14, 2021

Respectfully submitted,

JENNIFER B. DICKEY  
Acting Assistant Attorney General

JOHN V. COGHLAN  
Deputy Assistant Attorney General

AUGUST E. FLENTJE  
Special Counsel to the Assistant  
Attorney General

ALEXANDER K. HAAS  
Branch Director

DIANE KELLEHER  
BRAD P. ROSENBERG  
Assistant Branch Directors

/s/ M. Andrew Zee  
ELLIOTT M. DAVIS  
STEPHEN EHRLICH  
JOHN J. ROBINSON  
ALEXANDER V. SVERDLOV  
M. ANDREW ZEE  
Trial Attorneys  
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Telephone: (202) 305-0550

*Attorneys for Defendants*

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